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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

IN RE: Cause No. 06-60855  
INCREDIBLE AUTO SALES, LLC  
Debtor.

DEPOSITION  
OF  
STEVE MARKS

Taken at the law offices of  
PATTEN, PETERMAN, BEKKEDAH  
& GREEN  
2817 Second Avenue North, Suite 300  
Billings, Montana  
December 7, 2006 - 9:00 a.m.

## APPEARANCES:

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1 (AZ Certificate of Title - '04 Chevy Cavalier)	27
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## PROCEEDINGS

STEVE MARKS,

having been called for examination by counsel for  
Mr. Marks, having been first duly sworn to testify to the  
truth, the whole truth, and nothing but  
the truth, testified on his oath as follows:

## EXAMINATION

BY MR. PATTEN:

Q. Please state your name.

A. Steve Marks, M-a-r-k-s.

Q. Steve, are you familiar with a company called  
Steve's Auto Sales?

A. Yes, I am.

Q. Are you involved in Steve's Auto Sales?

A. I am. I am the president of it.

Q. You own stock in Steve's Auto Sales?

A. I do.

(Marks Deposition Exhibit Nos. 1 through 8  
marked for identification)

BY MR. PATTEN:

Q. Steve, I'm handing you what's been marked as  
Exhibits 1 through 8 --

MR. PATTEN: And, Shane, these are all the  
exhibits that we filed. Did you get Exhibit No. 8?

MR. COLEMAN: Yeah.

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BY MR. PATTEN:

Q. Steve, you are familiar with the car business?

A. Yes, I am.

Q. How long have you been in the car business?

A. Approximately 26 years.

Q. And in what capacity have you been in the car  
business in those 26 years?

A. Wholesale, retail both.

Q. How many of those 26 years have been here in  
Billings, Montana?

A. All of them.

Q. Describe briefly, if you can, the difference in  
your mind between the wholesale and retail car business.

A. Between wholesale and retail -- wholesale is  
basically selling to other dealers and selling through  
auction -- the difference between wholesale and retail is  
one is strictly to other dealerships that have dealer's  
licenses, of course, that's the wholesale basis; the  
retail is to the average public that comes on the lot.  
There is a difference of probably 25 percent between  
wholesale and retail basis for price wise.

Q. Does Steve's Auto Sale have a retail lot at  
this time?

A. Yes, we do.

Q. Where is it located?

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<p>SHEET 2 PAGE 5</p> <p>1 A. 1717 First Avenue North, Billings, Montana.</p> <p>2 Q. And how long has Steve's Auto had that retail</p> <p>3 lot?</p> <p>4 A. That location, probably six years.</p> <p>5 Q. How long has Steve's Auto Sales been in</p> <p>6 existence -- the corporation?</p> <p>7 A. The corporation, probably 16 years.</p> <p>8 Q. Has Steve's Auto Sales, since its incorporation</p> <p>9 16 years ago, always had a retail lot?</p> <p>10 A. No, it has not. The first two years, it was</p> <p>11 just a wholesale operation.</p> <p>12 Q. So at least for the last 14 years, Steve's Auto</p> <p>13 Sales has maintained a retail lot?</p> <p>14 A. Correct.</p> <p>15 Q. And during the last -- since the incorporation</p> <p>16 of Steve's Auto Sales, has Steve's Auto Sales also</p> <p>17 engaged in wholesale transactions of cars?</p> <p>18 A. Yes, we have.</p> <p>19 Q. Do you still currently engage in wholesale and</p> <p>20 retail transactions of cars?</p> <p>21 A. Yes.</p> <p>22 Q. Now, you mentioned that part of the wholesale</p> <p>23 transaction would be to purchase cars at an auto auction.</p> <p>24 A. Correct.</p> <p>25 Q. How many auto auctions do you traditionally go</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>	<p>PAGE 7</p> <p>1 Q. When you buy a car at the auto auction, then,</p> <p>2 do you put it on your retail lot?</p> <p>3 A. That's the first purpose, correct.</p> <p>4 Q. Do you sell cars through the auto auction?</p> <p>5 A. Yes, I do.</p> <p>6 Q. How frequently do you sell cars through the</p> <p>7 auto auction?</p> <p>8 A. Every week.</p> <p>9 Q. Are there particular cars that you sell through</p> <p>10 the auto auction -- that was a bad question, but do you</p> <p>11 sell a car through the auto action after it's sat on your</p> <p>12 retail lot for a certain time without selling?</p> <p>13 A. Usually I try to do 60 days, but, you know,</p> <p>14 I've sold cars through the auto auction as frequent as</p> <p>15 having something for one day.</p> <p>16 Q. Why do you do that?</p> <p>17 A. If I feel there's a profit structure there</p> <p>18 that's quick and -- it's cash flow, mainly.</p> <p>19 Q. So if you've been able to acquire it for less</p> <p>20 money than you think you can sell it through the auto</p> <p>21 auction, then --</p> <p>22 A. Of course, yes.</p> <p>23 Q. -- then you might immediately take it to the</p> <p>24 auto auction?</p> <p>25 A. Yes, sir.</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>
<p>PAGE 6</p> <p>1 to on behalf of Steve's Auto Sales?</p> <p>2 A. In a year's time, probably six different auto</p> <p>3 auctions, but one every week.</p> <p>4 Q. And there's one in Billings?</p> <p>5 A. Correct.</p> <p>6 Q. Do you go to every -- does the one in Billings</p> <p>7 have regularly-scheduled auctions?</p> <p>8 A. Yes, they do.</p> <p>9 Q. Do you go to every one of those?</p> <p>10 A. Except -- I go to every one except if I'm at a</p> <p>11 different sale in a different city.</p> <p>12 Q. What other cities do you go to to auto</p> <p>13 auctions?</p> <p>14 A. Phoenix, Arizona; Las Vegas, Nevada; Denver,</p> <p>15 Colorado; Boise, Idaho.</p> <p>16 Q. Typically, then, you are at an auto auction at</p> <p>17 least once a week?</p> <p>18 A. Typically, yes.</p> <p>19 Q. Can you estimate over the past year how many</p> <p>20 cars you've purchased at an auto auction?</p> <p>21 A. I would probably say between 6 and 700.</p> <p>22 Q. And approximately what number or what</p> <p>23 percentage of those cars would have been purchased at the</p> <p>24 auto action here in Billings?</p> <p>25 A. Probably 50 percent at least.</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>	<p>PAGE 8</p> <p>1 Q. Are there a lot of cars that will never see</p> <p>2 your retail lot, but that you will buy and sell without</p> <p>3 ever it getting to your retail lot?</p> <p>4 A. Yes.</p> <p>5 Q. Can you estimate generally what percentage of</p> <p>6 your gross annual sales of Steve's Auto Auction would</p> <p>7 involve cars that have never been on the retail lot?</p> <p>8 A. Probably 70 percent.</p> <p>9 Q. Okay. And would those cars that don't go onto</p> <p>10 your retail lot, would they have been purchased at an</p> <p>11 auto auction or would they have been purchased -- would</p> <p>12 you purchase them from other dealers and then run them</p> <p>13 through the auto auction?</p> <p>14 A. It would be both.</p> <p>15 Q. If you find a car, whether it's at an auto</p> <p>16 auction or another dealer's lot or wherever else that you</p> <p>17 think you can make money on by running it through the</p> <p>18 auction, that would be something that you would do?</p> <p>19 A. Yes, it would.</p> <p>20 Q. Where is the Billings Auto Auction physically</p> <p>21 located?</p> <p>22 A. I don't know their exact address, to be honest</p> <p>23 with you.</p> <p>24 Q. Okay.</p> <p>25 A. West end of Billings. It's on -- I think it's</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>

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1 King Avenue East.  
 2 Q. And it's right off of the South Billings  
 3 Boulevard with the interchange; is that correct?  
 4 A. Correct.  
 5 Q. Do you have financing that you utilize when you  
 6 buy automobiles?  
 7 A. Yes, I do.  
 8 Q. Do you get financing on an automobile by  
 9 automobile basis or do you have a flooring financing  
 10 arrangement?  
 11 A. I have a flooring financing arrangement.  
 12 Q. Who is your flooring financing arrangement  
 13 with?  
 14 A. I have two separate companies -- I have  
 15 Automotive Finance Corporation which is AFC, and Dealers  
 16 Services Corporation which is DSC.  
 17 Q. Do either AFC or DSC maintain an office or  
 18 presence in Billings?  
 19 A. Yes, they do.  
 20 Q. Do you know where their -- do they have an  
 21 office in Billings?  
 22 A. Yes, they do.  
 23 Q. Do you know where the offices are?  
 24 A. They are located in the auto auction.  
 25 Q. Okay. Is there a -- when you sell a car or buy

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1 a car from the auto auction, is there a -- in Billings,  
 2 is there a regular procedure that is followed with  
 3 respect to the payment of the purchase price and the  
 4 receipt of the title work for the car that is purchased?  
 5 A. There is, and it's actually at every auto  
 6 auction.  
 7 Q. Is it the same?  
 8 A. Yes.  
 9 Q. So it would be the same in Phoenix, Vegas,  
 10 Denver, and Boise as it is in Billings?  
 11 A. Correct.  
 12 Q. If you buy a car at an auto auction, can you  
 13 take it back if you decide you don't want it?  
 14 A. If there's a problem that occurs to the  
 15 vehicle, yes.  
 16 Q. What kind of problem are we talking about?  
 17 A. If there's a problem -- arbitration problem --  
 18 if there's a mileage discrepancy, if there's a  
 19 miscellaneous announcement that wasn't announced, like,  
 20 for instance, frame damage or flood damage or any  
 21 problems or issues the car may have that was not  
 22 announced in the sale room.  
 23 Q. When you buy a car at the auto auction, do you  
 24 go take it for a test drive before you bid on it?  
 25 A. Occasionally, yes.

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1 Q. Is that commonplace for buyers to test drive  
 2 the cars?  
 3 A. It is.  
 4 Q. And it must be allowed, then, that you have all  
 5 opportunity to inspect the car that you are interested in  
 6 buying.  
 7 A. Yes.  
 8 Q. How many cars go through the Billings Auto  
 9 Auction typically -- it has a sale once a week?  
 10 A. It does.  
 11 Q. On the same day every week?  
 12 A. Same day every week.  
 13 Q. Which day is that?  
 14 A. Wednesday.  
 15 Q. How many cars go through the auto auction  
 16 typically on Wednesday?  
 17 A. Typically probably 6 to 700.  
 18 Q. And does the auto auction like clear out all of  
 19 its cars and then within the next week gets another 6 to  
 20 700?  
 21 A. Not typically, you know, they probably range  
 22 about a 50 to a 60 percent sale average so the excess  
 23 40 percent, we will call it, will either be took back to  
 24 the consignor or will stay there for the next following  
 25 week so typically you will probably get an average of 3

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1 to 350 new cars per week.  
 2 Q. And if there is some misrepresentation, I will  
 3 say, about the mileage or damage to the car, things like  
 4 that, then you can return the car?  
 5 A. Yes, within a period of 14 days.  
 6 Q. When you buy a car at the auto auction, then,  
 7 are you required to immediately present payment for that  
 8 car?  
 9 A. Yes, you are.  
 10 Q. And do you get the title work immediately when  
 11 you present payment?  
 12 A. Typically, if the title is there, you do, but  
 13 occasionally the dealer may not have the title on the  
 14 auction premises -- you know, there is a lot of  
 15 out-of-state dealers, a lot of out-of-state companies so  
 16 they will typically send the title that day or the  
 17 following day.  
 18 Q. Okay. And do they send the title to the buyer  
 19 or do they send the title to the auction company?  
 20 A. Auction company.  
 21 Q. What does the auction company do with the  
 22 title, then?  
 23 A. They either will call the dealer that bought  
 24 the vehicle and tell them you can either come and pick up  
 25 the title, or if it's a finance company, like in my case,

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1 they just turn the title over to the finance company  
 2 that's there on premises or wherever it may be -- GMAC or  
 3 Ford Motor Credit or whoever it may be.  
 4 Q. Okay. Are you familiar with how the Billings  
 5 Auto Auction administers the money that's paid at the  
 6 auction?  
 7 A. Meaning?  
 8 Q. The auto auction must charge a fee of some kind  
 9 per car or, you know, for auction services.  
 10 A. They do, yes.  
 11 Q. Is it a flat fee or is it a percentage fee?  
 12 A. It's basically a scale on a percentage fee.  
 13 Q. What is that percentage?  
 14 A. I don't know right offhand, to be honest with  
 15 you.  
 16 Q. And is that taken out of the purchase price?  
 17 A. It's taken out of the proceeds that's delivered  
 18 to the seller.  
 19 Q. Okay. So a buyer at the auto auction pays the  
 20 auction company?  
 21 A. Correct.  
 22 Q. The auto auction company then keeps its auction  
 23 fee --  
 24 A. Correct.  
 25 Q. -- and then remits the balance to the seller?

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1 A. Correct.  
 2 Q. Will the auto auction remit the balance to the  
 3 seller before the title is delivered to the auto auction?  
 4 A. No, sir.  
 5 Q. Will the auto auction deliver the title to the  
 6 buyer before the sales proceeds are paid?  
 7 A. No, sir.  
 8 Q. Is the auto auction like an intermediary that  
 9 makes sure that the money and the title matches before  
 10 the money and the title goes to the other parties in the  
 11 transaction?  
 12 A. Yes, sir. For most people that don't  
 13 understand the automobile industry, it's kind of like the  
 14 real estate industry, you have a title company which is a  
 15 broker that makes sure before you take place of your real  
 16 estate there's a clear and a free title at purchase  
 17 before any money is exchanged from the buyer and the  
 18 seller -- they are a broker in the middle to make sure  
 19 everything is clear and free of any liens or any  
 20 obligations to anyone that no one knows.  
 21 Q. And the auto auction provides the same or  
 22 similar function?  
 23 A. Provides the same service.  
 24 Q. Do you know Nick Gutierrez?  
 25 A. I do.

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1 Q. How long have you know Mr. Gutierrez?  
 2 A. Probably over six years, I suppose.  
 3 Q. And has he been with Incredible Auto Sales that  
 4 whole entire time?  
 5 A. He was with the Chrysler dealership here which  
 6 was owned by Bob Anderson for a short period of time, and  
 7 then was with New Beginnings, and then Incredible Kia.  
 8 Q. Are you social friends with Mr. Gutierrez?  
 9 A. We were.  
 10 Q. Have you ever sold cars to Mr. Gutierrez or to  
 11 one of the companies that he owned before?  
 12 A. Many times, yes.  
 13 Q. And when you sold the cars, did you sell it on  
 14 a retail basis or a wholesale basis?  
 15 A. A wholesale basis.  
 16 Q. And did you sell the cars directly to whatever  
 17 entity he was involved in at the time?  
 18 A. Yes.  
 19 Q. Have you ever -- has he ever purchased at  
 20 auction cars that you were selling at auction?  
 21 A. Yes.  
 22 Q. How many times, if you can estimate, did he buy  
 23 cars at the auction over the years?  
 24 A. It would just be a pure estimation, but I would  
 25 say probably, without looking back, at least a hundred

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1 times -- I will use a round number -- in the six years.  
 2 Q. Did Mr. Gutierrez approach you this summer or  
 3 fall about purchasing cars?  
 4 A. Yes.  
 5 Q. When was it that he approached you, to the best  
 6 that you can remember?  
 7 A. To go into the whole situation, the first time  
 8 I spoke to Mr. Gutierrez in 4 or 5 months at least or  
 9 probably 6 months was we both go to the same church, and  
 10 it just happened on May 22nd of 2006, we had a  
 11 granddaughter that passed away, she was 4 months old; and  
 12 it was about September 23rd or 24th, we were in church --  
 13 me and my wife was -- and like anyone, we were sobbing  
 14 consistently, and Mr. Gutierrez and his wife sit at  
 15 the -- in the balcony, and they could oversee us -- we  
 16 were sitting on the floor -- and after services was done,  
 17 we walked to the foyer to our car, and Mr. Gutierrez and  
 18 his wife, Zsanece, came out and gave my wife a hug and  
 19 gave me a hug and told us how sorry they were, and she  
 20 was at the funeral -- Mrs. Gutierrez was -- and he  
 21 apologized for not being at the funeral and said, "Lets  
 22 get together tomorrow," he says, "I would like to talk to  
 23 you." And I said sure. He says, "I will pick you up for  
 24 lunch tomorrow," he said, "I would just like to talk to  
 25 you for a little while." I said sure.

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1 So the following Monday, he came to my office,  
2 and it was 5 minutes to noon, and he said, "Are you  
3 ready?" I said, "I will be in about 10 minutes." You  
4 know, and I took care of whatever I needed to take care  
5 of and we went and had lunch.

6 At that point in time, he just -- we talked  
7 about the whole family, so on and so forth, an hour, hour  
8 and a half went by, and it was really comforting, because  
9 I have no one really to talk to about situations like  
10 that -- family wise.

11 As he was dropping me back off to the car lot,  
12 he pulled in and pulled around my car lot and we were  
13 walking back to my office, and he said, "I need to  
14 purchase some cars, I need to buy some cars, I'm low on  
15 inventory." It's not uncommon for a dealer to come to my  
16 dealership to buy vehicles. I said sure. He says,  
17 "Well, if you have a list, give me a list and I will pick  
18 out the ones I want." I said, "I don't have any list."  
19 I says, "My list is basically in my head, I can tell you  
20 what I have or you can see what I have on the car lot."  
21 And he said fine, so he walked around and had a few cars  
22 picked out, and he said, "You have to have more new cars  
23 than this." And I says, "I do, but they are not all" --

24 Q. Let me back up, Steve. How many lots do you  
25 have?

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1 A. I have one retail lot, a wholesale warehouse,  
2 and then just everything else gets distributed through  
3 vendors in town.

4 Q. So you have another location where you'll keep  
5 cars that your intention is to wholesale only?

6 A. Wholesale only or have storage to get them  
7 ready for wholesale for different vendors in town, body  
8 shops, detail shops.

9 Q. Where is your storage or your shop for your  
10 wholesale?

11 A. 1009 Second Avenue North.

12 Q. Which must be adjacent or close to your retail?

13 A. Within nine blocks. Going back to how we came  
14 about this deal, Mr. Gutierrez had four vehicles picked  
15 out that I had on the lot, he said, "I need to buy more  
16 cars." I said, "I don't have any ready yet. I've got  
17 some that are going to be ready this week or the  
18 following week." He said, "What are they?" So I told  
19 him what they were, and he says, "Get me a list  
20 prepared." I said, "Well, they need body work and paint  
21 work." He said, "That's fine, just get me a list ready."

22 So the following day was Tuesday, I got the  
23 vehicles prepared for the auction on Wednesday, I kind of  
24 dropped the ball on getting him a list ready. The very  
25 next day at 12:05, he was back at my office, he said, "Do

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1 you have time for lunch today?" I said, "Yes, I do." So  
2 we went and had lunch again, small talk, family, so on  
3 and so forth, and we got back to my office, he said, "Is  
4 that list ready?" I said, "List?" He said, "List of  
5 cars that I want to buy." I said, "No, I haven't  
6 prepared anything yet." He said, "Well, I really need  
7 that list, I need to buy automobiles." I said, "Okay, I  
8 will prepare one."

9 Low and behold that afternoon I was busy with  
10 the auction vehicles, never prepared a list. The very  
11 next day which was Wednesday, I usually attend the sale  
12 between 8:45 and 9:15, I was running late, I got to the  
13 auction, and basically Wednesday I didn't even think  
14 about a list for Mr. Gutierrez because I got busy with  
15 other business at the auction.

16 Thursday morning, he calls me, he said, "Is my  
17 list ready?" I said, "Nick, I haven't got anything ready  
18 for you yet, I was busy with the auction on Wednesday."  
19 He said, "Well, I will be up there around 2:00, get me a  
20 list ready, so that's what I did, by 2:00 I had a list of  
21 cars ready; and on the list was 11 vehicles -- 11 that I  
22 thought he would purchase."

23 When we went to look -- I told him, "I need you  
24 to see these cars for what you are buying." He said,  
25 "okay, let's take a look." And we went to different body

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1 shops where the vehicles were, and while we were there,  
2 he would ask is that yours or is that yours, and I would  
3 acknowledge that that is or this isn't, and the ones that  
4 were mine, he would write down and say, well, what do you  
5 want for that, and I would give him a price, and he said  
6 okay, so throughout that day he bought 14 cars from me,  
7 and basically that's how it was structured.

8 Q. Okay. Now, so he picked out cars?

9 A. Correct.

10 Q. And you told him the price of the car?

11 A. Correct.

12 Q. And he would either agree or say, no, I won't  
13 buy that, then or --

14 A. Correct.

15 Q. So he looked at more than 14 cars and didn't  
16 come to an agreement or he didn't accept the price or  
17 whatever, is that?

18 A. A few of them were either mileage was too high  
19 or the year wasn't comparable to where he could make it  
20 work for his dealership.

21 Q. Okay. So this would have been on the Thursday  
22 after the auction?

23 A. Correct.

24 Q. Okay. And at that point, how many of the 14  
25 cars were in body shops?

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1 A. I would say probably -- without going back and  
2 looking at notes, probably between eight and nine.  
3 Q. And then the rest of them were either on your  
4 lot or in your warehouse?  
5 A. Either on my lot, I think there was one in the  
6 warehouse, and a couple at like different service areas  
7 -- tire places, glass.  
8 Q. Okay. Were any of those cars subject to your  
9 financing -- and when I say "your financing", I will say  
10 your flooring lender?  
11 A. Yes.  
12 Q. How many of them?  
13 A. Thirteen out of the fourteen that he purchased.  
14 Q. Did you have the original title work in your  
15 possession on that day?  
16 A. At my dealership?  
17 Q. Yes.  
18 A. No.  
19 Q. Where was the original title work?  
20 A. The original title work is at the lenders,  
21 always has been.  
22 Q. Okay. Did you deliver the cars to Nick or did  
23 Nick come and retrieve the cars from you?  
24 A. There was a few that we delivered, and there  
25 was some that he retrieved.

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1 Q. And when did you deliver them to him?  
2 A. It was probably the following Saturday and  
3 Monday.  
4 Q. Okay. Now the auto auction is involved in this  
5 transaction somehow.  
6 A. Correct.  
7 Q. But the cars weren't sold through the Wednesday  
8 auto auction.  
9 A. They did not run through the arena, correct.  
10 Q. How was the auto auction involved?  
11 A. The auto auction was involved for -- Nick  
12 called me when we came to an agreement on the vehicles  
13 and said, "I would like to buy these through the auto  
14 auction," basically for comfort of not having any  
15 problems with titles and so on and so forth, I would  
16 imagine, and that's fine with me because I do a lot of  
17 business with the auto auction in situations just like  
18 this, it's not the first time I've ever sold cars that  
19 didn't go through the auto auction to a dealer that the  
20 auction took care of paperwork for us.  
21 Q. Now, you've said before that the auto auction  
22 is like a real estate closing company?  
23 A. Closing company, same thing.  
24 Q. And you would be using the auto auction for  
25 those services --

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1 A. Correct.  
2 Q. -- when they weren't necessarily going through  
3 the arena, as you said.  
4 A. Correct.  
5 Q. The auto auction never had physical possession  
6 of these cars between Nick, I will say?  
7 A. Not that I'm aware of.  
8 Q. Who at the auto auction did you arrange to have  
9 the auto action act as the escrow or whatever?  
10 A. No, I did not arrange it; Nick did all that. I  
11 never even talked to the auto auction. I was not  
12 informed until Nick called me and told me the auction was  
13 going to be taking care of it, and a young man from the  
14 auction called me and said, "We are going to take care of  
15 the paperwork for you and Nick on this set of vehicles."  
16 Q. When was that conversation?  
17 A. Friday.  
18 Q. Was this Friday before possession of the cars  
19 was taken by Nick?  
20 A. Correct.  
21 Q. So before he even took possession of the cars,  
22 it was determined that they would go through the auction?  
23 A. Correct.  
24 Q. Do you remember the young man's name that  
25 called you?

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1 A. Jake.  
2 Q. Jake. And is that somebody that you've dealt  
3 with before?  
4 A. Many times, yes.  
5 Q. And what exactly did Jake tell you?  
6 A. He just said he spoke to Nick, they came to an  
7 agreement on commissions, and for me to bring VIN  
8 numbers, colors, makes and models of the vehicles and he  
9 will do the paperwork on them -- in lieu of me doing the  
10 paperwork on them, they will do the paperwork on them and  
11 give the buy-sells to Nick.  
12 Q. Was there an invoice, then, that was prepared  
13 for each vehicle?  
14 A. There was.  
15 Q. And was it prepared by the auto auction?  
16 A. It was.  
17 Q. Then to your knowledge, did Nick present  
18 payment for the vehicles?  
19 A. At that point in time, I had no knowledge --  
20 now, I do, but it's not something I get involved in  
21 because it's not -- it's the auction's business to  
22 collect, not mine.  
23 Q. Did you tell either AFC or DSC that particular  
24 vehicles were going to be sold to Nick or Incredible  
25 Auto?

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SHEET 7 PAGE 25

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1 A. Yes.  
 2 Q. Knowing what you know now, did Nick present  
 3 payment or did Incredible Auto Sales present payment for  
 4 the vehicles?  
 5 A. No.  
 6 Q. Did he present payment for any of the vehicles?  
 7 A. Yes.  
 8 Q. How many of them?  
 9 A. Three, is what I understand.  
 10 Q. And to your knowledge, was the title work for  
 11 the three vehicles delivered to Nick or Incredible Auto  
 12 Sales?  
 13 A. I understand he does have title work, yes.  
 14 Q. Did Nick present payment on any of the other  
 15 vehicles?  
 16 A. Not to my knowledge.  
 17 Q. Do you know if the payment that Nick presented  
 18 on the three, if the funds cleared through Nick's bank?  
 19 A. I know this now, no, they did not.  
 20 Q. You though -- and I mean Steve's Auto Sales --  
 21 received payment from the auto auction for the three that  
 22 Nick presented the payment on.  
 23 A. Yes.  
 24 Q. So with regard to the other vehicles, payment  
 25 was not presented by Incredible Auto Sales; correct?

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1 say "you", I'm talking about Steve's Auto Sales?  
 2 A. There's reassignments -- dealer reassignments  
 3 on the back that states give dealers an opportunity for a  
 4 wholesale portion of it to reassign it to another dealer  
 5 on the back side without having to put the title --  
 6 reassigned to a dealer who purchases it from them so they  
 7 don't have to apply for a new title in their name.  
 8 Q. You say that you go to auctions in Phoenix,  
 9 would this be a vehicle that you would have purchased at  
 10 the auction in Phoenix?  
 11 A. It was one, yes.  
 12 Q. Based on the original of Exhibit 1, could you  
 13 then convey -- transfer the title to somebody who  
 14 purchased the vehicle from you?  
 15 A. Yes, I could.  
 16 Q. Without having to go get a whole new title?  
 17 A. Correct.  
 18 Q. And how would you do that?  
 19 A. In the dealer's section -- it says "Dealer  
 20 Reassignment" --  
 21 Q. Yeah.  
 22 A. -- I sign off where the dealer -- it says  
 23 dealership name which is the seller which would be me,  
 24 and I sign off on it -- and in this case, it's my title  
 25 clerk which is Martha Bradley signed off on it -- and

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1 A. Correct.  
 2 Q. And do you know where the title work for those  
 3 vehicles is at this time?  
 4 A. I have eight titles in possession. I'm not  
 5 sure how many the auction has in its possession, I do  
 6 know they have at least one, and they may have more in  
 7 their possession. The auto auction paid me for six  
 8 vehicles.  
 9 Q. When you say you have eight titles in your  
 10 possession, do you physically possess the titles?  
 11 A. No, my lending company -- AFC or DSC has the  
 12 titles -- they are two separate companies.  
 13 Q. Now, I've put before you, Steve, Exhibits 1  
 14 through 8, okay, are you familiar with these documents?  
 15 A. Very much so.  
 16 Q. What is Exhibit No. 1?  
 17 A. It is the title -- Arizona Certificate of Title  
 18 on an '04 Chevy Cavalier.  
 19 Q. Now, this title shows that the owner is Arizona  
 20 Federal Credit Union; correct?  
 21 A. Correct.  
 22 Q. Do you own this car or do you think you own  
 23 this car?  
 24 A. Well, I know I own it, I owe money on it.  
 25 Q. Why isn't the title in your name -- and when I

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1 puts the new registered dealer on it where it says  
 2 "Buyer".  
 3 Q. So if I was to buy this car from you, then my  
 4 name would appear about half way down under the "Dealer  
 5 Reassignment" line?  
 6 A. Your name as a retail customer or as a  
 7 prospective dealer?  
 8 Q. Well, how about if I'm a retail customer?  
 9 A. Retail customer? Your name would go on the  
 10 bottom of this. This would be -- along with the bottom,  
 11 it would have another form which is called an MV1 form, a  
 12 retail form, that we would have to attach to this.  
 13 Q. And if I'm a dealer --  
 14 A. Then it would just go right to the next  
 15 available reassignment, it doesn't have to be  
 16 particularly in the middle -- see, if another dealer  
 17 comes into here (indicating), they get wholesaled  
 18 again -- there is four reassignments on back of the title  
 19 so it could be transferred four times without having a  
 20 new title put in that dealership's name.  
 21 Q. Now, the current location -- physical location  
 22 of the original of Exhibit 1 is with either AFC or DSC?  
 23 A. It's with DSC.  
 24 Q. DSC, okay. Did you ever tender Exhibit No. 1  
 25 to Incredible Auto Sales?

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1 A. No.  
 2 Q. Why not?  
 3 A. Because I was never paid for it.  
 4 Q. Okay. Is the -- did you have an agreement with  
 5 Incredible Auto Sales as to when you would give them the  
 6 title relative to when payment would be made?  
 7 A. No.  
 8 Q. Well, did you have an agreement with them that  
 9 you would give them the title and they would pay you  
 10 later?  
 11 A. Well, first of all, I never give title to  
 12 Incredible because the title has to go to the Billings  
 13 Auto Auction, that's where they were sold through.  
 14 Q. So was the agreement, then, with Incredible  
 15 Auto Sales that when Incredible Auto Sales tendered  
 16 payment, then the auto auction would obtain the title  
 17 from DSC?  
 18 A. I would imagine so, yes.  
 19 Q. Well, you imagine so or was that the  
 20 arrangement?  
 21 A. We had no per se arrangement saying that this  
 22 title had to be delivered here or then. As I had titles,  
 23 it would be tendered to the auto auction to receive  
 24 payment, and as long as the vehicles were completed out  
 25 of the body shop -- the vehicles at this point in time

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1 were still in the body shop, and, you know, various  
 2 services around the city.  
 3 Q. Okay. Well, was this particular vehicle in the  
 4 body shop at the time?  
 5 A. I don't recall, to be honest with you -- I  
 6 don't think it was.  
 7 Q. Well, what was the arrangement in terms of the  
 8 delivery of the title work to Incredible Auto Sales?  
 9 A. The arrangement is I deliver title, I get a  
 10 check, I get paid for it.  
 11 Q. It would be a contemporaneous exchange of money  
 12 for the title?  
 13 A. Correct.  
 14 Q. And that would all be administered by the auto  
 15 auction?  
 16 A. Correct.  
 17 Q. And that was the -- is that the standard  
 18 practice with -- at the auto auction?  
 19 A. Yes, it is.  
 20 Q. And is that the standard practice at the other  
 21 auto auctions that you go to?  
 22 A. Definitely so.  
 23 Q. Is that the way the business is done in the  
 24 industry?  
 25 A. It is.

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1 Q. Look at Exhibit No. 2, do you recognize that?  
 2 A. I do.  
 3 Q. Is this also for a vehicle that was involved in  
 4 the transaction with Incredible?  
 5 A. Yes, it is.  
 6 Q. Do you know if this vehicle was in a body shop?  
 7 A. Yes, it was.  
 8 Q. Do you know where the original of the title  
 9 that Exhibit 2 is a copy of is located?  
 10 A. Automotive Finance Corporation -- AFC.  
 11 Q. AFC. Did Incredible Auto Sales ever tender the  
 12 purchase price for this vehicle?  
 13 A. Not that I'm aware of, no.  
 14 Q. Now, again, this title shows that the owner of  
 15 the car is Enterprise Rent a Car of Montana, Wyoming.  
 16 A. Correct.  
 17 Q. What about -- where in this document would it  
 18 indicate that Steve's Auto Sales is the owner of the car?  
 19 A. Right on the front where it says, "Part 1.  
 20 Seller Agreement and Warranty of Title (Deliver to Buyer  
 21 within 15 days from the date of sale), and, see, it says  
 22 Steve's Auto Sales, Incorporated.  
 23 Q. As the buyer. And then under this form of  
 24 title, can you transfer it to a subsequent buyer without  
 25 having to get a new title?

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1 A. Yes, we can. On the back side of the title, it  
 2 says, "First dealer Assignment with Warranty of Title",  
 3 and "Deliver to the Buyer within 15 days from date of  
 4 sale."  
 5 Q. And then you can do another reassignment,  
 6 correct, with this title?  
 7 A. Correct.  
 8 Q. Look at Exhibit No. 3, if you would, do you  
 9 recognize that?  
 10 A. I do.  
 11 Q. Do you know where the original that 3 is a copy  
 12 of is located?  
 13 A. Pardon me?  
 14 Q. Do you know where the location of the original  
 15 title that No. 3 is a copy of is located?  
 16 A. Yes, I do.  
 17 Q. Where is that?  
 18 A. Denny Menholt Frontier Chevrolet.  
 19 Q. Now, why is it at Denny Menholt Chevrolet?  
 20 A. That's where I purchased it from, and they did  
 21 not have a lien release from Wells Fargo Financial on  
 22 this, and it just -- they were waiting for a lien release  
 23 to come back to them so they haven't delivered title to  
 24 me.  
 25 Q. Now, let me back up, the car that is on title

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- 1 No. 1 -- Exhibit No. 1, the 2004 Chevy Cavalier, you have  
 2 possession of that car now?  
 3 A. No.  
 4 Q. You don't?  
 5 A. No, I do not.  
 6 Q. Where is it?  
 7 A. That car, to our information, has been retailed  
 8 by Nick or Incredible Auto Sales.  
 9 Q. Do you know, Steve, if Incredible Auto Sales  
 10 could arrange a transfer of this title to its buyer?  
 11 A. There's no possible way they can without having  
 12 a physical title.  
 13 Q. Can they get a duplicate title from Arizona?  
 14 A. They can fraudulently.  
 15 Q. If they got a duplicate title, would,  
 16 presumably, they have to get Arizona Federal Credit Union  
 17 to sign it?  
 18 A. Presumably.  
 19 Q. Are you aware if states will allow you to  
 20 transfer ownership by faxed copies of titles?  
 21 A. No.  
 22 Q. Steve look at Exhibit No. 2, do you know where  
 23 that vehicle is?  
 24 A. Yes, I do.  
 25 Q. Where is it?

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- 1 A. It's at my location.  
 2 Q. Now, the court gave you permission on Tuesday  
 3 to take possession of the vehicles; is this one of them  
 4 that you took possession of pursuant to the court's  
 5 order?  
 6 A. Yes.  
 7 Q. Vehicle No. 3, do you know where that car is  
 8 located now?  
 9 A. It's in my possession.  
 10 Q. And did you take possession of this car also  
 11 pursuant to the court order?  
 12 A. I had it in my possession before the court  
 13 order.  
 14 Q. Was possession of this car ever provided to  
 15 Incredible Auto Sales?  
 16 A. No.  
 17 Q. Why not?  
 18 A. It is a vehicle that needed work, and we were  
 19 working on it.  
 20 Q. When you say "we were working on it", does that  
 21 mean that Steve's Auto was working on it?  
 22 A. We did a few things ourselves, and we had other  
 23 service shops do some reconditioning to it.  
 24 Q. Okay. So at the time Incredible wanted to  
 25 purchase the car, there was still physical work to be

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- 1 done to the car?  
 2 A. Yes, on quite a few of the vehicles.  
 3 Q. And whose responsibility was it to accomplish  
 4 that physical work?  
 5 A. It was mine.  
 6 Q. Okay. And your cost; correct?  
 7 A. Correct.  
 8 Q. So you were to deliver a repaired car to  
 9 Incredible?  
 10 A. Correct.  
 11 Q. And because this car was under repair of some  
 12 kind, it never went to Incredible?  
 13 A. Correct.  
 14 Q. Showing you Exhibit No. 4, do you recognize  
 15 this document?  
 16 A. Yes, I do.  
 17 Q. Now, this is another Arizona title.  
 18 A. Yes, sir.  
 19 Q. Do you know where the original copy of this  
 20 Arizona title is?  
 21 A. I do.  
 22 Q. Where is that?  
 23 A. At my finance corporation -- I'm pretty sure  
 24 it's DSC.  
 25 Q. Now, the one that the title is at Menholt

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- 1 Chevrolet, is this vehicle financed on -- your  
 2 acquisition of this vehicle financed?  
 3 A. Not as I've collected anything from any of the  
 4 finance companies on it, no.  
 5 Q. Okay. So there's no flooring lien from your  
 6 flooring company on this vehicle?  
 7 A. Not at this time.  
 8 Q. Going back to No. 4, where on Exhibit No. 4  
 9 would it show that you're the owner of the vehicle?  
 10 A. On the back side of the title in the first  
 11 reassignment, it shows that Arizona State Savings and  
 12 Credit Union signed off to Steve's Auto Sales.  
 13 Q. Do you know where the 2005 Kia is physically  
 14 located?  
 15 A. Yes.  
 16 Q. Where?  
 17 A. It's in my possession.  
 18 Q. How long has it been in your possession?  
 19 A. Since the day that I purchased it.  
 20 Q. Why was this not delivered to Incredible Auto  
 21 Sales?  
 22 A. It was having work done to it -- body work done  
 23 to it and never got delivered.  
 24 Q. So this would be in the same situation as the  
 25 2003 Dodge Stratus?

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<p>SHEET 10 PAGE 37</p> <p>37</p> <p>1 A. Correct.</p> <p>2 Q. Did Incredible Auto Sales tender payment for</p> <p>3 the vehicle -- for the 2005 Kia?</p> <p>4 A. Not to me, they haven't, or to my knowledge the</p> <p>5 auction, no.</p> <p>6 Q. Has Incredible Auto tendered payment to either</p> <p>7 you or the auction for the 2003 Dodge Stratus?</p> <p>8 A. No, sir.</p> <p>9 Q. I don't know if I've asked you, but have they</p> <p>10 tendered payment for the 2006 Dodge --</p> <p>11 A. 2007.</p> <p>12 Q. 2006 Dodge Caliber? And have they tendered</p> <p>13 payment on the 2004 Chevy Cavalier?</p> <p>14 A. No.</p> <p>15 Q. Look at Exhibit No. 5, do you know where the</p> <p>16 original title that 5 is a copy of is located?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Where?</p> <p>19 A. DSC -- Dealer Services Corporation.</p> <p>20 Q. Here in Billings?</p> <p>21 A. Here in Billings. My flooring company.</p> <p>22 Q. Where on Exhibit 5 would it indicate that</p> <p>23 Steve's Auto is the owner?</p> <p>24 A. On the back side of the title in the first</p> <p>25 reassignment.</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>	<p>PAGE 39</p> <p>39</p> <p>1 A. Correct.</p> <p>2 Q. Do you understand the third page of Exhibit 5</p> <p>3 to affect a transfer of the ownership from the Alvarados</p> <p>4 back to the Arizona Central Credit Union?</p> <p>5 A. Do I understand --</p> <p>6 Q. The repossession affidavit to affect a transfer</p> <p>7 of title from the Alvarados to the credit union.</p> <p>8 A. Yes, I do.</p> <p>9 Q. Were you ever tendered payment by Incredible</p> <p>10 Auto Sales for the 2002 Mercury Sable?</p> <p>11 A. No, I have not.</p> <p>12 Q. Look at Exhibit 6, do you know where the</p> <p>13 original copy of this title is?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Where?</p> <p>16 A. Dealer Services Corporation.</p> <p>17 Q. And do you have physical possession of the 2006</p> <p>18 Pontiac G6?</p> <p>19 A. Yes, I do.</p> <p>20 Q. How long have you had possession?</p> <p>21 A. One day.</p> <p>22 Q. So that was another one you recovered pursuant</p> <p>23 to the judge's order?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever been tendered payment on the 2006</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>
<p>PAGE 38</p> <p>38</p> <p>1 Q. Have you been tendered payment on the 2002</p> <p>2 Mercury Sable?</p> <p>3 A. No, I have not.</p> <p>4 Q. Do you know where the location of the 2002</p> <p>5 Mercury Sable is?</p> <p>6 A. It's in my possession.</p> <p>7 Q. And is this one of the vehicles you obtained</p> <p>8 possession of pursuant to the judge's order?</p> <p>9 A. Yes, it is.</p> <p>10 Q. Now, Steve, there's a third page to Exhibit 5</p> <p>11 which is a repossession affidavit.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Are you familiar with this document?</p> <p>14 A. I am familiar with documents like this one,</p> <p>15 yes.</p> <p>16 Q. What does this document mean? What does it</p> <p>17 show?</p> <p>18 A. It shows a release of lien from Arizona Central</p> <p>19 Credit Union, is what it is. It says that they</p> <p>20 repossessed it and signed it off by them to Steve's Auto</p> <p>21 Sales. It's an affidavit of repossession and bill of</p> <p>22 sale.</p> <p>23 Q. And on the front of the title on Exhibit 5, the</p> <p>24 owner is shown as Sandra Louise Alvarado and Nicholas</p> <p>25 Pete Alvarado.</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>	<p>PAGE 40</p> <p>40</p> <p>1 Pontiac G6 from Incredible Auto Sales?</p> <p>2 A. No.</p> <p>3 Q. Now, this one is already in your name -- title</p> <p>4 is in your name; correct?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Look at Exhibit No. 7, do know where the</p> <p>7 original copy of this title is?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Where?</p> <p>10 A. Dealer Services Corporation.</p> <p>11 Q. And do you have possession of this 2005 Suzuki?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Did you get that yesterday pursuant to the</p> <p>14 judge's order?</p> <p>15 A. Yes, I did.</p> <p>16 Q. Have you ever been tendered payment by</p> <p>17 Incredible Auto Sales for this 2005 Suzuki?</p> <p>18 A. No.</p> <p>19 Q. Look at Exhibit No. 8, do you recognize this</p> <p>20 document?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Do you know where the original copy of this car</p> <p>23 title is?</p> <p>24 A. Yes.</p> <p>25 Q. Where?</p> <p>JAN BARRY COURT REPORTING 406.259.8111</p>

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- 1 A. AFC -- Automotive Finance Corporation.  
 2 Q. And do you have possession of this vehicle?  
 3 A. No.  
 4 Q. Do you know where this vehicle is?  
 5 A. No.  
 6 Q. Do you have any understanding as to what's  
 7 happened with this vehicle?  
 8 A. Incredible Auto Sales/Nick Gutierrez retailed  
 9 this vehicle as far as they are telling us.  
 10 Q. Sold it to somebody else?  
 11 A. Sold it to someone.  
 12 Q. Have you ever been tendered payment on this  
 13 2005 Chrysler -- is it a Town and Country? Is that what  
 14 it is?  
 15 A. Yes, it is. No, I have not.  
 16 Q. Now, Steve, Exhibits 1, 4, 5, and 7 are Arizona  
 17 titles; correct?  
 18 A. Correct.  
 19 Q. And I understand you would have bought these  
 20 vehicles at the Phoenix auction.  
 21 A. Yes, sir.  
 22 Q. You've also testified that these titles are  
 23 possessed by either AFC or DSC.  
 24 A. Correct.  
 25 Q. Do you know how they were delivered to AFC or

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- 1 DSC?  
 2 A. I don't know what you mean, but the auto  
 3 auction is the one that handles that, I don't even get to  
 4 see titles.  
 5 Q. Do you know does AFC do business in Arizona?  
 6 A. Yes, they do.  
 7 Q. Does DSC do business in Arizona?  
 8 A. Yes, they do. They both have offices at that  
 9 particular auction -- at various auctions.  
 10 Q. Okay. Is it pretty common for AFC to have an  
 11 office at -- physically at the same place as the auto  
 12 auction?  
 13 A. It's more common than you will imagine.  
 14 Q. Same for DSC?  
 15 A. Correct.  
 16 Q. So you've never seen the original of these or  
 17 you've never had possession of the original of these  
 18 titles?  
 19 A. No.  
 20 Q. That happens in the background with the various  
 21 auction companies and with AFC or DSC?  
 22 A. Correct. They handle all the title paperwork,  
 23 we don't handle it.  
 24 Q. But ultimately the titles get up here?  
 25 A. Ultimately, yes.

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- 1 Q. If these vehicles were sold now, how would you  
 2 be able to transfer title?  
 3 A. I would have to go to AFC or DSC -- whoever the  
 4 vehicle is financed through -- my financier -- and have  
 5 to tender them payment to pay the vehicles off, then  
 6 receive title.  
 7 Q. So you can't transfer title unless the lien is  
 8 paid off?  
 9 A. Well, of course not.  
 10 Q. What's your current status with AFC and DSC?  
 11 A. AFC and DSC -- AFC which I have a \$200,000  
 12 floor line has totally cut me off at this point in time  
 13 because of this status.  
 14 Q. Okay. And when you say "because of this  
 15 status", what do you mean exactly?  
 16 A. They wanted the vehicles to have them paid  
 17 off -- the two vehicles that they have floored or I can't  
 18 do any more business with them -- or I haven't done any  
 19 more business with them since.  
 20 Q. So you can't go buy any more vehicles and  
 21 finance them through AFC?  
 22 A. No, sir.  
 23 Q. How about DSC?  
 24 A. DSC will still let me floor vehicles, the issue  
 25 we have with them is we have -- our limit is floored up,

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- 1 we don't have any more room to purchase no vehicles.  
 2 Q. Okay. So you have to liquidate --  
 3 A. Correct.  
 4 Q. -- cars in order to get --  
 5 A. Anymore available funding.  
 6 Q. Do you have other cars besides any of them  
 7 reflected in Exhibits 1 through 8 that are financed  
 8 through DSC?  
 9 A. Yes.  
 10 (Recess taken)  
 11 BY MR. PATTEN:  
 12 Q. Steve, has Steve's Auto ever sold cars to  
 13 Incredible Auto Sales -- excuse me, have you purchased  
 14 cars from Incredible Auto Sales?  
 15 A. Yes, I have.  
 16 Q. And have you purchased any recently?  
 17 A. I purchased 3 vehicles on the same date that I  
 18 sold him these 14 -- or that he said he was going to buy  
 19 these 14, I purchased 3 from him.  
 20 Q. Okay. So the deal was Incredible was going to  
 21 buy 14 from Steve's, and Steve's was going to buy 3 from  
 22 Incredible?  
 23 A. Correct.  
 24 Q. And did you, in fact, buy the three from  
 25 Incredible?

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1 A. Yes, I did.  
 2 Q. Was that also done through the auto auction?  
 3 A. Yes, it was.  
 4 Q. Did you tender payment --  
 5 A. Yes, I did.  
 6 Q. -- for the three?  
 7 A. Yes.  
 8 Q. To whom did you tender the payment?  
 9 A. The auto auction.  
 10 Q. And did you get the title work on the three?  
 11 A. I did.  
 12 Q. From whom did you get the title work?  
 13 A. Auto auction.  
 14 Q. And the title work was all signed and so forth  
 15 so that it put the title into the name of Steve's Auto?  
 16 A. To my knowledge -- I didn't see the title work,  
 17 but to my knowledge, it must have been.  
 18 Q. Okay. Why didn't you see the title work?  
 19 A. It's something that I don't necessarily do  
 20 myself -- there's instances that I would, but most times  
 21 it's either done by the flooring company or done by my  
 22 secretary.  
 23 Q. Were the cars that you bought from  
 24 Incredible -- these three -- were they floored?  
 25 A. No, they weren't.

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1 Q. You paid those out of your own pocket also?  
 2 A. Correct.  
 3 Q. So your title clerk would have been the person  
 4 who would have handled that?  
 5 A. Correct.  
 6 MR. PATTEN: That's all I've got.  
 7 EXAMINATION  
 8 BY MR. COLEMAN:  
 9 Q. Mr. Marks, my name is Shane Coleman, I  
 10 represent Hyundai Motor Finance Company. We've met  
 11 before, haven't we?  
 12 A. Yes, we have.  
 13 Q. Let me apologize in advance, I'm going to skip  
 14 around quite a bit because your counsel covered an awful  
 15 lot of material and I may take some of that out of order.  
 16 First off, let's talk about these three vehicles you  
 17 purchased from Mr. Gutierrez, when did you purchase  
 18 those?  
 19 A. They would be on the same afternoon that he  
 20 purchased mine, it was that Friday.  
 21 Q. What vehicles were those?  
 22 A. It was a 2004 Impala, a 2005 Chrysler Sebring,  
 23 and I don't recall the last one -- I think the last one  
 24 was a Neon -- an '05 Neon.  
 25 Q. And as far as you know, you did get clean

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1 titles to those?  
 2 A. As far as I know, yes, I've never had any  
 3 problems with them. I sold them and collected on them so  
 4 I'm sure we did, yes.  
 5 Q. Did you sell them retail or wholesale?  
 6 A. Wholesale.  
 7 Q. Do you know who you sold them to?  
 8 A. Right through the auto auction.  
 9 Q. Did Mr. Gutierrez tell you why he wanted to get  
 10 rid of those?  
 11 A. He said they were over age and inventory.  
 12 Q. Now, he maintains at least two different lots  
 13 for Incredible Kia; is that your understanding?  
 14 A. Locally in Billings, yes.  
 15 Q. And those are what we have called the primary  
 16 and secondary lots -- the primary one being further east  
 17 on King Avenue?  
 18 A. Correct.  
 19 Q. And the secondary lot is out in front of New  
 20 Beginnings?  
 21 A. It is.  
 22 Q. Do you remember which lot these vehicles were  
 23 sitting on?  
 24 A. One -- two were on the primary lot, and one was  
 25 on the New Beginnings lot.

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1 Q. What was your understanding of New Beginnings?  
 2 Was that owned by Incredible Kia or Incredible Chevrolet?  
 3 A. Incredible Kia.  
 4 Q. Tell me why you say that.  
 5 A. Incredible Kia has always owned New Beginnings  
 6 since it opened.  
 7 Q. You mean the employees that worked out of that  
 8 building?  
 9 A. Both the employees and the business itself.  
 10 Q. The vehicles out front were all owned by  
 11 Incredible Kia, as far as you know?  
 12 A. I assume so.  
 13 Q. I want to make sure that I understand exactly  
 14 the status of each of the 8 vehicles that we are talking  
 15 about, and, first off, so I'm clear, you sold 14 vehicles  
 16 to Mr. Gutierrez?  
 17 A. Correct.  
 18 Q. Are you only seeking to repossess or retake  
 19 possession of eight of those?  
 20 A. Correct.  
 21 Q. And of those eight, we've got the 2004 Chevy  
 22 Cavalier, this is a vehicle that Mr. Gutierrez has  
 23 already retailed?  
 24 A. That's what they told me, to my knowledge,  
 25 that's correct.

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1 Q. Have you seen it since the bankruptcy was  
2 filed?  
3 A. No.  
4 Q. The 2007 Caliber is a vehicle that you retook  
5 possession of within the last --  
6 A. Twenty-four hours.  
7 Q. And when you retook possession of that vehicle,  
8 did you retake -- was it on one of Incredible's lots?  
9 A. It was staged in an area -- or I should say New  
10 Beginnings, along with a dozen more -- probably 14 more  
11 vehicles.  
12 Q. Not for sale, but on their lot in the back  
13 somewhere?  
14 A. Correct.  
15 Q. How did that vehicle -- the 2007 Dodge  
16 Caliber -- get to Nick's lot? Did he pick that up or did  
17 you deliver it?  
18 A. They picked it up. I was out of state when  
19 they picked it up right from the body shop.  
20 Q. Do you remember which body shop that was?  
21 A. It was at the Paint Doctor up on the Heights.  
22 Q. How about the 2004 Cavalier that we just talked  
23 about that was retailed, do you remember how that got to  
24 Incredible?  
25 A. I don't recall, I'm not sure if one of their

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1 salespeople picked it up or maybe one of my salespeople  
2 dropped it off, I'm not sure.  
3 Q. At some point, though, it was physically on  
4 Incredible's lot?  
5 A. It was.  
6 Q. The 2003 Dodge Stratus, I understood you to  
7 testify had never been physically delivered to Incredible  
8 Auto Sales?  
9 A. That's correct.  
10 Q. Where was that specifically?  
11 A. It was at my location, then went to a service  
12 place to get some service work done.  
13 Q. Which service place?  
14 A. I think it was Griffins Enterprise to get some  
15 painting done.  
16 Q. What was the arrangement with Mr. Gutierrez in  
17 terms of when he could pick that up or when they would  
18 deliver it?  
19 A. When it was completed.  
20 Q. Would he have to get permission from you to  
21 pick it up at that point or would the paint shop call him  
22 directly?  
23 A. You know, I don't -- it's something that we  
24 don't really forego arrangements of who -- if you need  
25 permission to pick something up or not, you know,

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1 basically he could pick it up if he wanted to. It's no  
2 different than the Caliber, he never got permission from  
3 me to pick up the Caliber, but he did.  
4 Q. And that's just how it works in the business?  
5 A. Well, I mean generally with someone that you  
6 know that you've done business with -- generally someone  
7 you know in the industry that's purchased a vehicle from  
8 you, yeah, pick it up.  
9 Q. As far as you know, was the 2003 Dodge Stratus  
10 ever on the Incredible Auto Sales lot?  
11 A. Not to my knowledge.  
12 Q. How about the 2005 Kia? This one was never  
13 delivered to the lot either?  
14 A. No, sir.  
15 Q. Where was that specifically when it was  
16 purchased by Nick?  
17 A. The paint doctor.  
18 Q. Same as the previous car, as far as you know,  
19 he never picked it up?  
20 A. The '07 caliber?  
21 Q. I'm sorry, the 2005 Kia, Nick never picked that  
22 one up?  
23 A. No, that's correct.  
24 Q. And you have had possession of -- let's get  
25 back to the Status, I apologize. The Stratus is one you

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1 picked up within the last 24 hours as well?  
2 A. No, sir. I've had that since the beginning.  
3 Q. When did you -- so you picked it up from the  
4 paint shop, then?  
5 A. Correct.  
6 Q. When did you pick it up from the paint shop?  
7 A. Probably -- I don't know the exact date, to be  
8 honest with you, I wouldn't want to --  
9 Q. More than a week ago?  
10 A. Oh, yes.  
11 Q. And the same with the Kia Spectra, it's one  
12 that you picked up more than a week ago?  
13 A. Yes.  
14 Q. The 2002 Mercury Sable, that one was, in fact,  
15 delivered to Nick's lot?  
16 A. It was.  
17 Q. Do you remember whether it was delivered by you  
18 or whether he picked it up?  
19 A. I don't recall.  
20 Q. Do you remember if it was in a body shop before  
21 it was picked up?  
22 A. I don't recall it was, no.  
23 Q. Same with the Pontiac G6, this is something you  
24 picked up in the last 24 hours?  
25 A. Yes, it was.

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- 1 Q. This one was physically delivered to Incredible  
2 Auto Sales before the bankruptcy?  
3 A. Before the bankruptcy, yes.  
4 Q. The 2005 Suzuki Forenza, same with that one, it  
5 was physically on the Incredible Auto Sales lot?  
6 A. At the time of --  
7 Q. At the time of bankruptcy?  
8 A. Yes, it was.  
9 Q. And you have that one in your possession within  
10 the last 24 hours?  
11 A. Yes.  
12 Q. How about -- I don't remember the name of it --  
13 whatever Exhibit 8 was?  
14 A. Chrysler Town and Country.  
15 Q. That vehicle was also physically delivered to  
16 the lot, I assume?  
17 A. That's another one they picked up from the body  
18 shop.  
19 Q. And this one, I believe you testified has been  
20 retailed?  
21 A. Yes.  
22 Q. Do you know who owns that now?  
23 A. I do.  
24 Q. You do?  
25 A. Of course.

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- 1 Q. Maybe I misunderstood you. You own this on  
2 your lot, Exhibit 8?  
3 A. No, I own the vehicle, I don't have it, though.  
4 Q. Oh, okay, I see the distinction you are making  
5 now. Who has physical possession of it?  
6 A. I have no idea.  
7 Q. It's -- have you asked Nick or anybody in  
8 Incredible who has these vehicles that have been sold?  
9 A. They actually supplied a list of vehicles that  
10 were sold to all the attorneys, and I did see the list,  
11 but I don't know the people's name on the list.  
12 Q. Have you spoken to anyone at Incredible Auto  
13 Sales about what happened to these vehicles?  
14 A. Personally, no.  
15 Q. Where are the vehicles that you've taken  
16 possession of physically located now?  
17 A. 1717 First Avenue North.  
18 Q. And again, I apologize if this was covered  
19 already, but do each of these vehicles then have -- are  
20 they each subject to the flooring line of your lenders?  
21 A. Yes, they are.  
22 Q. Even the one that had the title from Denny  
23 Menholt?  
24 A. I haven't borrowed any money on it yet, no,  
25 that would be the only one that hasn't.

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- 1 Q. Now, before September of 2006, when was the  
2 last time you bought or sold vehicles to or from Nick or  
3 any of his companies?  
4 A. Physically on a one to one basis, probably four  
5 to six months prior.  
6 Q. And tell me what you mean by physically on a  
7 one to one basis?  
8 A. If I were to go to his dealership or he was to  
9 come to my dealership. Now, if he has employees at the  
10 auto auction that I have a vehicle that runs through the  
11 auto auction they purchase, I consider that not a deal  
12 that I have done with him personally.  
13 Q. You might have bought his vehicles, but if you  
14 did so, it was because they just happened to pass through  
15 the auto auction -- you may have purchased vehicles from  
16 Incredible Auto Sales or sold them to him, but if those  
17 transactions -- within the preceding four months, but if  
18 those transactions happened, it was purely because they  
19 went through the -- I forgot the term you used -- they  
20 went through the auction open to everybody?  
21 A. Correct.  
22 Q. What's that called where they -- not the  
23 showroom, but where they go through the --  
24 A. The arena.  
25 Q. The arena. Had you spoken with Mr. Gutierrez

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- 1 about purchasing or selling vehicles in the previous four  
2 to five months?  
3 A. No.  
4 Q. And over the last six years, I think you  
5 testified you probably had sold a hundred vehicles to  
6 him?  
7 A. Probably, yes.  
8 Q. So was it unusual that you had not sold  
9 vehicles to or from him within the last four to  
10 five months?  
11 A. It was -- it's unusual in a sense of him buying  
12 as many as he did, but it wasn't a question of if I sold  
13 them in the past as many as 20 as one time.  
14 Q. But how about the lapse in time there of four  
15 to five months without selling anything to him, was that  
16 unusual?  
17 A. Well, no, I went through -- that four or  
18 five-month period was kind of a bad period for us, losing  
19 our grandchild, and, you know, it's kind of -- it takes a  
20 lot out of you, I hope no one ever feels the feeling of  
21 that, and the business wasn't something that -- it was  
22 secondhand, to be honest with you.  
23 Q. Sure. I'm very sorry to hear that. Have you  
24 ever been in business with Nick?  
25 A. No.

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- 1 Q. Did Nick used to own a car lot on First Avenue  
2 somewhere -- 1500, I think the address might have been?  
3 A. 1501. Not owned, leased.  
4 Q. Leased. What was the name of that car lot?  
5 A. New Beginnings.  
6 Q. That was as well?  
7 A. Yes.  
8 Q. When was that in existence?  
9 A. From the beginning of New Beginnings name.  
10 Q. Just the lot on 1501 First Avenue.  
11 A. Are you saying since Nick had it or since the  
12 previous person besides Nick, because it wasn't Nick's in  
13 the beginning, it was Tony Woolery.  
14 Q. Yeah, why don't you tell me about that. So  
15 that's a Tony Woolery location -- or was?  
16 A. Was.  
17 Q. Did Nick ever operate it then?  
18 A. Yes, he did.  
19 Q. He did he operate it as Auto Pro Auto Sales or  
20 was it operated as New Beginnings?  
21 A. Auto Pro Auto Sales is a name that Nick used,  
22 but everything was still under New Beginnings. I think  
23 it's one of his corporations that he uses to funnel this  
24 or that through.  
25 Q. Do you know from whom he leased that property?

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- 1 A. He leased it from me.  
2 Q. Do you still own that property?  
3 A. No, I don't.  
4 Q. For how long were you leasing that property to  
5 Nick?  
6 A. I think there was a -- Tony Woolery had a  
7 five-year lease that was existing when Nick purchased  
8 Incredible from him, I think there was still two years  
9 left on that lease, and a two year lease after that so  
10 approximately four years.  
11 Q. Do you still own that property today?  
12 A. No, I sold it.  
13 Q. When did you sell it?  
14 A. On November 1st of this year.  
15 Q. Why did you sell it?  
16 A. I had different ventures.  
17 Q. Were you using that property or had you leased  
18 it out to somebody else?  
19 A. In that interim?  
20 Q. At the time you sold it.  
21 A. No, I was not using it.  
22 Q. We've talked about Exhibits 1 through 8, have  
23 you seen -- since the bankruptcy was filed, have you seen  
24 the actual originals of these titles?  
25 A. No.

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- 1 Q. Have any of your employees seen the originals  
2 of these titles?  
3 A. They may have.  
4 Q. How many employees do you have?  
5 A. I have four.  
6 Q. Who, if any of them, may have seen the  
7 originals of these titles?  
8 A. Martha Bradley.  
9 Q. Under what circumstances would she have seen  
10 the originals?  
11 A. She's my title clerk at the dealership.  
12 Q. So when we -- we looked at a number of these,  
13 and I think your counsel asked with respect to a lot them  
14 how do we know what on here shows that you are the owner,  
15 and there appears to be something signed by somebody  
16 giving you the title; is that -- you've never seen these  
17 physically, but somebody in your office signed that on  
18 your behalf?  
19 A. Correct.  
20 Q. I mean on behalf of Steve's Auto?  
21 A. Steve's Auto.  
22 Q. How often when you wholesale vehicles to  
23 another dealer in an arrangement that you've already made  
24 ahead of time will you run the transaction through the  
25 auto auction any way?

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- 1 A. It's not something that's done regularly, but  
2 it has been done. I couldn't give you an amount of how  
3 many times, but there's been occasions when it has been  
4 done.  
5 Q. Does it happen most of the time?  
6 A. No.  
7 Q. 10 percent of the time, maybe?  
8 A. I would say more like 3 percent of the sales  
9 that I do.  
10 Q. Fairly unusual, then?  
11 A. Well, it's not that it's unusual, it happens --  
12 most likely it happens when you have two dealers -- one  
13 from out of town or out of state and one from, you know,  
14 here, and it just is something that you feel a lot more  
15 comfortable with -- product, paper wise and so forth.  
16 They are making sure you give title, you get check, you  
17 give check, you get title.  
18 Q. Have you ever previously used the auto auction  
19 under those circumstances for a transaction with another  
20 dealer here in town?  
21 A. Another dealer here in town -- I don't recall.  
22 Q. Did it seem unusual that since you already knew  
23 Nick -- I think you testified you were social friends and  
24 had done business before that he wanted these vehicles to  
25 go through the auto auction even though he was here in

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1 town?

2 A. It wasn't unusual, but the statements that he  
3 made when he wanted the copies of the titles were to see  
4 if there was any discrepancies on the titles of being  
5 flood damage or anything from the Katrina or from the  
6 Louisiana area or if there's a big situation with  
7 vehicles having frame damage -- frame damage is a vehicle  
8 that's been wrecked or sustained a large amount of damage  
9 to the structure of the vehicle, you want to make sure  
10 that everything is okay before you put it on your retail  
11 lot, and that's one thing that the auction provides is  
12 that protection.

13 Q. In your previous dealings with Mr. Gutierrez,  
14 had any of those transactions run through the auction?

15 A. I can't recall, to be honest with you.

16 Q. You don't remember any that did, anyway?

17 A. You know, none that strikes me right away, but  
18 I'm not saying that there wasn't.

19 Q. I think I heard you say a minute ago when  
20 Mr. Gutierrez asked for copies of the titles, did he at  
21 some point ask you for photocopies of these titles?

22 A. Yes.

23 Q. When was that?

24 A. Right on that Friday morning -- might have been  
25 Thursday -- Thursday or Friday.

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1 Q. Before he had received possession of the  
2 vehicles?

3 A. Yes.

4 Q. Did he tell you why he wanted those?

5 A. For that reason, to see if there was anything  
6 that came from Louisiana area, making sure there was no  
7 flood damage history vehicles, if there was any mileage  
8 discrepancies, making sure all the mileage was accurate  
9 and actual, making sure that there was no prior flood or  
10 salvage announcements on the vehicles, and that's why he  
11 wanted to go through the auction just so he feels  
12 comfortable about buying the vehicles.

13 Q. Was it unusual for another dealer to ask for  
14 photocopies of the titles before the vehicles were  
15 delivered?

16 A. Yeah.

17 Q. Did you say anything to Nick at the time that,  
18 hey, this seems unusual?

19 A. I said I don't have them -- actually, what he  
20 wanted was a physical title of the vehicle, and I said I  
21 don't have them.

22 Q. So did you arrange for him to get photocopies  
23 of the titles or to look at the photocopies of the  
24 titles?

25 A. We called the flooring company that we had and  
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1 they faxed him out copies of them; and also the auction  
2 where the titles were, we made the phone calls and got  
3 him copies of the titles.

4 Q. And just asked those folks to fax them over to  
5 Nick?

6 A. Yeah.

7 Q. Do you remember -- and I said Nick, obviously I  
8 meant Incredible Auto Sales, but do you remember to whom  
9 at Incredible Auto Sales specifically they were faxed?

10 A. Not really, no.

11 Q. You don't know if it was Jody, his office  
12 manager?

13 A. I'm not sure if it was Jody or Nick or Leilana,  
14 I'm not sure. They use -- I presume they use one fax in  
15 a general area.

16 Q. As far as you know, he did receive photocopies  
17 of the titles?

18 A. As far as I know, yes.

19 Q. Did you personally call any finance companies  
20 in the auction to ask them to do that?

21 A. I think so.

22 Q. Did anyone there say that this sounded like an  
23 unusual request?

24 A. No.

25 Q. Did they have any problem doing that?

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1 A. Not at the time, no.

2 Q. Have they mentioned that they have a problem  
3 with it since?

4 A. Yeah.

5 Q. Who mentioned that they had a problem with it?

6 A. Well, both companies won't do that anymore.

7 Q. Why not?

8 A. Because of this situation.

9 Q. And tell me what your understanding of this  
10 situation is.

11 A. That you guys -- Hyundai Motor Credit --  
12 financed -- I shouldn't say financed, but gave sums of  
13 money on copies of titles to prospective dealers, not the  
14 physical title.

15 Q. And it's your understanding that someone at  
16 Incredible Auto Sales received the photocopies of the  
17 titles, completed additional information, and submitted  
18 those reworked titles -- photocopies of titles to Hyundai  
19 in order to obtain financing?

20 A. After looking at the documents that was  
21 presented as evidence, yes -- after looking at documents  
22 pertaining to evidence that was submitted to the court.

23 Q. When you were talking to Nick about these  
24 titles, did he ever mention that he would use these  
25 titles in order to obtain financing?

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1 A. No.  
 2 Q. Did he ever mention that he would have somebody  
 3 sign the photocopies of the titles?  
 4 A. No.  
 5 Q. When you were talking about running these  
 6 vehicles through the auction, did he ever mention that  
 7 running them through the auction would help him obtain  
 8 financing?  
 9 A. It was never something that was brought up. I  
 10 didn't know his finances at the time.  
 11 Q. Did you know Hyundai was his flooring lender?  
 12 A. I didn't know Hyundai, I thought it was Kia.  
 13 It was Kia Financial and Stockman Bank, is what I  
 14 thought.  
 15 Q. And Nick has done business with Stockman Bank  
 16 in the past, hasn't he?  
 17 A. He has, to my knowledge.  
 18 Q. But he never mentioned one reason he would send  
 19 these through the auction would be so that he could  
 20 obtain financing more easily?  
 21 A. I never questioned his finances.  
 22 Q. Aside from the titles, are there any other  
 23 written documents that you are aware of that are related  
 24 to your agreement to sell these 14 vehicles to  
 25 Incredible?

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1 A. I'm not sure what you are pertaining to.  
 2 Q. Is there a master contract somewhere that says  
 3 how these vehicles will be delivered or anything like  
 4 that?  
 5 A. Not that I'm aware of at this point in time.  
 6 Q. There's no documents, for instance, that says I  
 7 agree to sell the following 14 vehicles to Nick  
 8 Gutierrez?  
 9 A. Not that I'm aware of, no.  
 10 Q. Just the titles, is what we have for  
 11 documentation?  
 12 A. You mean the photocopies?  
 13 Q. Photocopies of the title, sure.  
 14 A. Yeah, and the stuff that he got from the auto  
 15 auction, is what I understand.  
 16 Q. What else do you understand that he has from  
 17 the auto auction?  
 18 A. Just the sales orders that have been pertained  
 19 into evidence.  
 20 Q. When did you first discover that there was a  
 21 problem with payment on these vehicles?  
 22 A. When we took down -- when my secretary took  
 23 down titles to receive payment from the auto auction and  
 24 they denied payment because of the vehicle that Nick did  
 25 pay for, checks came back not sufficient funds, and at

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1 that point in time they said they wouldn't pay us for  
 2 anything else until he straightens out the existing  
 3 problem they have.  
 4 Q. What did you do at that time?  
 5 A. My secretary turned around and just walked  
 6 across the hallway and gave the titles back to my finance  
 7 company.  
 8 Q. Did you contact Nick or anybody at Incredible  
 9 then?  
 10 A. I think I spoke to him late that afternoon,  
 11 yes.  
 12 Q. And what did you say to him?  
 13 A. I asked him what's going on, and he said they  
 14 are waiting for funding to come in from various banks or  
 15 lending companies himself and he has already has arranged  
 16 it with the auction that he's going to be taking care of  
 17 everything, and that was acceptable.  
 18 Q. Did he mention to you at that time that he had  
 19 tried to floor some or all of these vehicles through his  
 20 finance company?  
 21 A. It never was brought up, no.  
 22 Q. And he, I assume, didn't mention that he had  
 23 already faxed off copies of the titles to the finance  
 24 company then?  
 25 A. No, I mean because to my knowledge I didn't

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1 think you guys would even floor a vehicle without having  
 2 titles.  
 3 Q. And what -- roughly, how long before the  
 4 bankruptcy was filed was this?  
 5 A. I don't remember the exact date, but I would  
 6 say probably three days.  
 7 Q. Did you make attempts to repossess these  
 8 vehicles at any time?  
 9 A. I did not, no.  
 10 Q. Did anybody, as far as you know?  
 11 A. The auto auction did.  
 12 Q. What attempts did they make to repossess the  
 13 vehicles?  
 14 A. They made an attempt to actually physically go  
 15 to his place of business and try to retrieve the  
 16 vehicles, and he said -- this is hearsay, the auto  
 17 auction is telling me is that he -- Nick denied them  
 18 rights to take the vehicles and that he would be there  
 19 that afternoon in their attorney's office with a  
 20 cashier's check for the whole amount of what he owed at  
 21 3 p.m..  
 22 Q. Okay.  
 23 A. At 2:59 p.m. they get a phone call at the  
 24 attorney's office and said they filed Chapter 11.  
 25 Q. So the day the auction showed up, as far as you

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1 know, was the day the bankruptcy was filed?  
 2 A. I'm pretty sure, yes.  
 3 Q. Did you ever prepare any written demand to  
 4 Incredible to get these vehicles back?  
 5 A. Any written demand to Incredible?  
 6 Q. Did you send them a letter or anything?  
 7 A. No.  
 8 Q. Since the bankruptcy was filed, have you had  
 9 any conversations with Nick?  
 10 A. Yes.  
 11 Q. How many conversations have you had?  
 12 A. He's called me three times.  
 13 Q. When was the first time he called you?  
 14 A. The first time he called me was -- well, my  
 15 first conversation with Nick was in church the following  
 16 Sunday.  
 17 Q. What church is that?  
 18 A. Life Center Church.  
 19 Q. And what was the nature of that conversation?  
 20 A. Again, we sat where we usually sit, and he sits  
 21 up in the balcony, and either -- well, I know he told the  
 22 pastor what happened and what was going on, and the  
 23 pastor was leading into a sermon how even when people do  
 24 bad things to people, you should forgive them and  
 25 everything else, and it just didn't feel comfortable with

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1 me so I walked out -- my wife and grandchildren were  
 2 still in church, and I walked into the foyer, just  
 3 waiting for them to be done, and about two minutes before  
 4 service ended, he comes down and talks to me in the  
 5 foyer, and I really didn't say much. He says, you know,  
 6 "I'm sorry for what happened, we are trying to work this  
 7 out to get it corrected." I says, "Nick, all you need to  
 8 do is I just want my cars back, simply." And he says,  
 9 "Oh, I can't do that, there's no possible chance that  
 10 that's ever going to happen." "Well, why not? I've  
 11 never got paid for them, I just want my cars back."  
 12 And then my wife and everyone else in church  
 13 gets -- church is over, and my wife sees him there  
 14 talking to me, then my wife kind of told him a lot more  
 15 what she thought of him than I did by all means and what  
 16 kind of strain he put us in and our financial problem  
 17 that he put us through and so on and so forth, and then  
 18 his wife just grabbed his arm and she drugged him out the  
 19 door -- Zsanece did.  
 20 Q. Was that the end of the first conversation, I'm  
 21 guessing, then?  
 22 A. That was the end of the first conversation,  
 23 correct.  
 24 Q. When was the second conversation that you had  
 25 with Nick?

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1 A. He called me on my cell phone about 15 minutes  
 2 later that day.  
 3 Q. How long did you speak with him?  
 4 A. I did not speak to him, I just seen it was his  
 5 number, and it went into voice mail. I wasn't in -- I  
 6 didn't want to speak to him, and he just left a real long  
 7 message of how sorry he was and he knows everything we  
 8 went through and so on and so forth, and that was the  
 9 extent of it.  
 10 Q. Did you save that message?  
 11 A. Until about four days ago.  
 12 Q. Did you have it transcribed, by chance?  
 13 A. No, I haven't.  
 14 Q. Who else would have listened to that voice  
 15 message?  
 16 A. I'm not sure. Did I play it for you?  
 17 Q. Other than your lawyer.  
 18 A. Oh, my wife, of course, I think a couple other  
 19 people in the industry, I'm not sure if they listened to  
 20 the whole entire thing or not -- in the automobile  
 21 industry.  
 22 Q. Why would you have played the message for other  
 23 individuals to hear?  
 24 A. Just because of what he's done and had the gall  
 25 of calling me and saying that, you know, it wasn't his

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1 fault, it was Hyundai's fault for doing this to him.  
 2 Q. Did he tell you why he thought it was Hyundai's  
 3 fault?  
 4 A. No, he just said it was not so much -- it was  
 5 Kia's fault, is what he said.  
 6 Q. It was Kia's fault?  
 7 A. Yeah.  
 8 Q. He didn't tell you why it was Kia's fault?  
 9 A. No.  
 10 Q. You mentioned three conversations; is this  
 11 voice message the second conversation?  
 12 A. Correct.  
 13 Q. When was the third conversation, then?  
 14 A. The third conversation was after our very first  
 15 meeting with all the attorneys and everything when we  
 16 were in -- I think right after we left your office -- is  
 17 that the first time -- I think that was the first time.  
 18 Q. When we took testimony in court?  
 19 A. Right. Then we went to your office to try to  
 20 resolve the vehicles -- who gets what vehicles and so on  
 21 and so forth -- it's when we sat there for a long time  
 22 and you guys ignored us.  
 23 Q. Didn't mean to ignore you.  
 24 A. Right after that, that evening he called me and  
 25 said, "What did you guys agree upon?" And I said, "Well,

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1 why would you care?" He said, "Well, no, I just wanted  
2 to find out what the end result was." I said, "The end  
3 result was nothing," and that was the extent of it, and I  
4 hung up.

5 Q. You haven't spoken with him since?

6 A. No, once when I think we were in court or  
7 something like that, just small talk. I think you were  
8 there also.

9 Q. Have you spoken with his wife at all?

10 A. No.

11 Q. How about Ken Cornelison, you know who he is?

12 A. I know of him.

13 Q. You haven't had any conversations with him?

14 A. No.

15 Q. Within the last week, Incredible Auto Sales  
16 withdrew its objection to your motion to modify stay; you  
17 are aware of that, aren't you?

18 A. Yes.

19 Q. Did you have any discussions with anyone other  
20 than your lawyer about that withdrawal?

21 A. No, I didn't even know they were doing it.

22 Q. Do you know why they did it?

23 A. No, I don't -- can I rephrase that?

24 Q. Go right ahead.

25 A. Because he thinks he did wrong.

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1 Q. One thing you mentioned when Nick went looking  
2 at these vehicles -- I think it was a Friday when he  
3 looked at the vehicles --

4 A. Thursday, I think.

5 Q. -- Nick was interested in vehicles with low  
6 mileage; is that accurate?

7 A. Yes.

8 Q. Did he tell you why he was interested in  
9 vehicles with low mileage?

10 A. It's just generally when you have a new car  
11 dealership, you don't want nothing with 130,000 miles on  
12 them, that's just natural industry -- I mean everybody  
13 wants something with low mileage and being clean.

14 Q. Did he also ever mention he wanted something  
15 with a fairly late model year?

16 A. Yeah, he didn't want anything old, old, yeah.

17 Q. Did he ever tell you in connection with those  
18 conversations that it would be easier for him to get  
19 financing if it was a late model vehicle or a low mile  
20 vehicle?

21 A. No, we never really brought up the financing,  
22 to be honest with you.

23 Q. Of the 14 vehicles that he purchased, how many  
24 were in body shops, roughly, or any sort of service shop?

25 A. I'm going to say without looking back at some

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1 notes, probably eight or nine.

2 Q. When you sell vehicles to other dealers, how  
3 often do they agree to purchase them before they are out  
4 of the body shop or paint shop?

5 A. It doesn't happen on a regular basis, but it  
6 does happen, you know, where it's -- it depends on the  
7 vehicle and how in demand that vehicle is and if they  
8 have it presold or if they need it -- I mean it's not  
9 unheard of in the industry to buy something that is in  
10 the body shop or being -- having a motor repaired or in a  
11 transmission or anything else.

12 Q. It's not unheard of, but I take it from your  
13 answer it's not the normal case either.

14 A. No, it isn't, but it happens.

15 Q. The body shop and paint shops we talked about  
16 previously where these vehicles were located, do you own  
17 any of those?

18 A. No, sir.

19 Q. If you would look at Exhibit 5, please, I  
20 believe this is for a Mercury Sable.

21 A. It is.

22 Q. And you repossessed this within the last  
23 24 hours?

24 A. Yes.

25 Q. Where was it when you picked it up?

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1 A. I didn't do it personally, I sent my people to  
2 pick it up -- my salespeople.

3 Q. Did you know whether it was on Incredible's  
4 lot?

5 A. It was in the same area with all the other  
6 cars -- or at least that's where they had it staged when  
7 we came to pick it up, because I talked to Ken Cornelison  
8 yesterday early morning at about 9:15, he said give me  
9 until late this afternoon which would have been yesterday  
10 to get everything keyed up and make sure everything  
11 starts and that way you guys won't have any problem  
12 taking anything away from that area. I presume they were  
13 all within the same area. They were at one time when we  
14 inspected them.

15 Q. So you had previously been out to inspect these  
16 vehicles during the course of the bankruptcy?

17 A. Yes, right after our first meeting.

18 Q. Is that the only time you inspected them?

19 A. That was the only time.

20 Q. You did that personally?

21 A. Yes, me and the owner from the Auto Auction of  
22 Montana.

23 Q. Do you recall whether you saw this specific  
24 vehicle on Exhibit 5?

25 A. Yes, it was there.

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1 Q. The reason I ask is I can't find that on their  
2 list of inventory that they supposedly had when the case  
3 was filed, and that's why -- I was hoping maybe you could  
4 shed some light on that -- I mean when you were there,  
5 you touched it, saw it?

6 A. Yes.

7 MR. COLEMAN: That's all I have.

8 RE-EXAMINATION

9 BY MR. PATTEN:

10 Q. Steve, you said something that -- to the effect  
11 that the auto auction provides protection from frame or  
12 flood damage?

13 A. Correct.

14 Q. How does it provide any protection from frame  
15 or flood damage?

16 A. As a dealer that runs a vehicle through the  
17 sale -- or purchases a vehicle, I should say, you have  
18 14 days from date of purchase in that if you find any  
19 frame damage to a vehicle, any unannounced problems that  
20 may have occurred, anything that's a hidden issue -- and  
21 a hidden issue is like flood, frame, a vehicle that could  
22 have been salvaged -- you know, someone has fixed and it  
23 turned out to be a salvage vehicle, salvage history, one  
24 with an odometer problem -- you have -- an odometer  
25 problem is open to years, it's not something that has a

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1 one week or two-week status, saying that two weeks if you  
2 can't find an odometer problem, it's yours, no, it's a  
3 federal offense so it stays with the vehicle, and the  
4 auto auction gives you protection because they do a  
5 background search on every vehicle that's sold which is  
6 called a Carfax.

7 Q. Steve, now, you've said -- and you've used the  
8 term "purchased" in describing the transactions that are  
9 at issue here with Incredible Auto Sales.

10 A. Mm-hmm.

11 Q. Is it your position that Incredible Auto Sales  
12 purchased the vehicles that are reflected in Exhibits 1  
13 through 8?

14 A. To make a purchase, you have to pay for  
15 something; when there's nothing paid, it's not considered  
16 a purchase.

17 Q. Why do you use the word "purchase", then, if  
18 your testimony is that you weren't paid for them?

19 A. Well, because in the normal sense of business,  
20 you buy something, you pay for it. It might be a term  
21 that I use in a normal act of business that's supposed to  
22 be done that way; he didn't do it in the normal way.

23 MR. PATTEN: That's all I have.

24 . . .

25 . . .

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RE-EXAMINATION

1 BY MR. COLEMAN:

2 Q. If I can just follow up on that briefly, in  
3 your mind, then, if payment had been made, then it would  
4 have been a purchase?

5 A. Pardon me?

6 Q. If payment had been made, then there would have  
7 been a purchase of these vehicles?

8 A. If payment has been made, would there be a  
9 purchase --

10 Q. Let me start over. In your mind, if payment  
11 had been made by Incredible Auto Sales for these  
12 vehicles, then there would have been a purchase?

13 A. Yes.

14 MR. COLEMAN: That's all I have.

15 MR. PATTEN: That's all I have.

16 (Deposition concluded)

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## DEPONENT'S CERTIFICATE

1 I, STEVE MARKS, do hereby certify that I have  
2 read the foregoing 79 pages of typewritten material and  
3 that the same is, with any changes noted below, a full,  
4 true, and correct transcript of my oral deposition given  
5 at the time and place hereinbefore mentioned.

6 PAGE LINE CORRECTION REASON FOR CORRECTION

7  
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18 STEVE MARKS.  
19 Subscribed and sworn to before me this \_\_\_\_\_

20 day of \_\_\_\_\_, \_\_\_\_\_.

21 Notary Public  
22 For the State of \_\_\_\_\_  
23 Residing at \_\_\_\_\_  
24 My commission expires: \_\_\_\_\_

25 (Seal)

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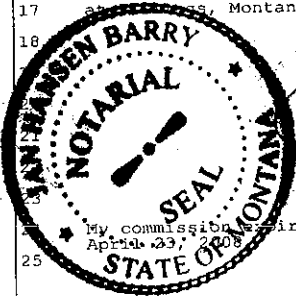
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## REPORTER'S CERTIFICATE

I, JAN HANSEN BARRY, a Registered Professional Reporter and notary public, certify STEVE MARKS was first duly sworn by me to testify to the truth; that I was then and there authorized to administer an oath; that his deposition was reported by me in machine shorthand and thereafter reduced to writing; that after being reduced to writing, the original of this transcript was made available to the deponent for examination and signature; that this is a true and correct record of the testimony given by said deponent.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in the action.

IN WITNESS WHEREOF, I have set my hand and seal at Billings, Montana this 9th day of December, 2006.



Jan Hansen Barry  
Registered Professional Reporter  
Notary Public for the State of  
Montana  
Residing at PO Box 1321  
Billings, Montana 59103  
(406) 259-8111

My commission expires:  
April 23, 2008

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## DEPONENT'S CERTIFICATE

I, STEVE MARKS, do hereby certify that I have read the foregoing 79 pages of typewritten material and that the same is, with any changes noted below, a full, true, and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

PAGE	LINE	CORRECTION	REASON FOR CORRECTION
43	20 THRU. 22	NO SIR.	IT SHOULD READ "NO SIR. I CAN NOT"
52	6 THRU. 8	WOULDN'T WANT TO	WOULDN'T WANT TO GUESS THE DATE



STEVE MARKS.

Subscribed and sworn to before me this 12<sup>th</sup>  
day of December, 2006.

Marcia Berg / Marcia Berg

Notary Public  
For the State of Montana  
Residing at Billings, Montana  
My commission expires: 10/10/2007

(Seal)